

ORIGINATION FORM

Date: **02-17-14**

Originator: Jocelyn Croci

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Specification Title: **LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC.**

Specification Section, Article, or Subarticle Number: SUBARTICLE 7-1.1

Why does the existing language need to be changed?

Under the case of Diversified v. Simpkins, 974 F. Supp. 1448, 1451 (S.D. Fla. 1997), a federal court interpreted Florida contract law and determined that broad covenants to comply with all federal regulations do not include compliance with environmental law. The existing language is a broad covenant to comply with all regulations and should be modified to follow the courts guidance and expressly incorporate environmental law.

Summary of the changes:

Become familiar with and comply with all Federal, State, and Local Rules and Regulations ~~all Federal, State, county, and city laws, by laws, ordinances, and regulations~~ that control the action or operation of those engaged or employed in the work or that affect material used.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such Federal, State, and Local Rules and Regulations ~~laws, by-laws, ordinances, regulations, order, or decrees~~; whether by himself or his employees.

Are these changes applicable to all Department jobs? Yes

If not, what are the restrictions?

Will these changes result in an increase or decrease in project costs? No cost change.

The department contracts are being updated to reflect the federal court's interpretation of Florida law.

If yes, what is the estimated change in costs?

With who have you discussed these changes? Calvin Johnson, Chief of Civil Litigation, Kathleen Toolan, Chief of Administrative Law, Erik Fenniman, Chief of Eminent Domain Litigation; Roger Wood, Special Counsel; Art Burger, Special Counsel, Construction

What other offices will be impacted by these changes? All department contracts

Are changes needed to the PPM, Design Standards, SDG, CPAM or other manual? No

Are all references to external publications current? Yes

If not, what references need to be updated (please include changes in the redline)?

Is a Design Bulletin, Construction Memo, or Estimates Bulletin needed? No.

Contact the State Specifications Office for assistance in completing this form.

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ANANTH PRASAD, P.E.
SECRETARY

M E M O R A N D U M

DATE: April 30, 2014

TO: Specification Review Distribution List

FROM: Daniel Scheer, P.E., State Specifications Engineer

SUBJECT: Proposed Specification: 0070101 Legal Requirements and Responsibility to the Public.

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change.

The changes are proposed by Jocelyn Croci, D2 General Counsel Office, to expressly incorporate environmental law in our existing specification language.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or to my attention via e-mail at SP965DS, or daniel.scheer@dot.state.fl.us. Comments received after **May 29, 2014**, may not be considered. Your input is encouraged.

DS/ft
Attachment

LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC.**(REV 3-26-14)**

SUBARTICLE 7-1.1 is deleted and the following substituted:

7-1.1 General: Become familiar with and comply with all Federal, State, *and Local Rules and Regulations*~~county, and city laws, by laws, ordinances, and regulations~~ that control the action or operation of those engaged or employed in the work or that affect materials used. Pay particular attention called to the safety regulations promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). In addition, comply with Chapter 403, of the Florida Statutes, regarding control of air pollution. Direct special attention to that portion of Chapter 17-5 of the Rules and Regulations, pertaining to open burning in land clearing operations. Where work or structures included in the Contract are in “Navigable Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Part 329); “Waters of the U.S.,” (reference 33 of the Code of Federal Regulations, Parts 323 and 328); or “Waters of the State,” (reference Part 4, Chapters 253 and 373 of the Florida Statutes and Section 62-340 of the Florida Administrative Code); comply with the regulatory provisions of Section 404 of the Federal Clean Water Act of 1977; Sections 9 and 10 of the Federal River and Harbor Act of 1899; Chapter 161 of the Florida Statutes; and any local authority having jurisdiction over such waters.

Comply with Part IV, Chapter 378, of the Florida Statutes regarding land reclamation. Direct special attention to Chapters 62c-36 and 62c-39 of the Florida Administrative Code. Submit the Notice of Intent to Mine to:

Department of Environmental Protection
Collins Building
2051 East Dirac Drive
Tallahassee, Florida 32310-3760

with a copy to the Engineer. The Engineer will determine consistency with the environmental documents prior to commencement of mining.

Obtain certification from the Construction Industry Licensing Board as required by Part I, Chapter 489, of the Florida Statutes, regardless of exemptions allowed by Section 489.103, prior to removing underground pollutant storage tanks. Dispose of tanks and pollutants in accordance with the requirements and regulations of any Federal, State, or local, agency having jurisdiction.

Prior to building construction or renovation, provide copies of current registrations or certifications issued by the Florida Construction Industry Licensing Board in accordance with Chapter 489, for the appropriate category of construction.

Corporations must be registered with the State of Florida, Department of State, Division of Corporations, and hold a current State Corporate Charter Number in accordance with Chapter 607, Florida Statutes.

The Contractor or the authorized subcontractor applying the roofing material must be licensed or be an approved dealer and applicator of the proposed roofing material.

Indemnify, defend, and save harmless the Department and all of its officers, agents, and employees, in the amount of the Contract price, against all claims or liability arising from or based on the violation of any such ~~laws, by laws, ordinances, regulations, order, or decrees~~ *Federal, State, and Local Rules and Regulations*, whether by himself or his employees.

The Contractor shall comply with all environmental permits, including measures identified in the National Pollutant Discharge Elimination System (NPDES) Stormwater Pollution Prevention Plan and Sediment and Erosion Control Plan for the work.

The Contractor shall exert every reasonable and diligent effort to ensure that all labor employed by the Contractor and his subcontractors for work on the project work harmoniously and compatibly with all labor used by other building and construction contractors now or hereafter on the site of the work covered by this Contract. Include this provision in all subcontracts, and require all subcontractors to include it in their subcontracts with others. However, do not interpret or enforce this provision so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article I, Section 6 of the Florida Constitution.

Comply with Chapter 556 of the Florida Statutes during the performance of excavation or demolition operations.

The Executive Order 11246 Electronic version, dated September 24, 1965 is posted on the Department's website at the following URL address: www.dot.state.fl.us/specificationsoffice/federal/deo11246.pdf . Take responsibility to obtain the information posted on this website up through five calendar days before the opening of bids and comply with the provisions contained in Executive Order 11246.

If the Department's website cannot be accessed, contact the Department's Specifications Office Web Coordinator at (850) 414-4101.